

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 10-01398

PRESENT: SCUDDER, P.J., FAHEY, CARNI, SCONIERS, AND MARTOCHE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

DARYL RUTTY, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (ROBERT B. HALLBORG, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (JAHARR S. PRIDGEN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Deborah A. Haendiges, J.), rendered May 3, 2010. The judgment convicted defendant, upon a nonjury verdict, of criminal contempt in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him following a nonjury trial of criminal contempt in the first degree (Penal Law § 215.51 [b] [iii]), defendant contends that the verdict is against the weight of the evidence. We reject that contention. Viewing the evidence in light of the elements of the crime in this nonjury trial (*see People v Danielson*, 9 NY3d 342, 349), and affording appropriate deference to Supreme Court's credibility determinations (*see People v Hill*, 74 AD3d 1782, *lv denied* 15 NY3d 805), we conclude that the alleged deficiencies in the evidence are not so substantial as to render the verdict against the weight of the evidence (*see generally People v Bleakley*, 69 NY2d 490, 495).

Finally, we note that the certificate of conviction incorrectly reflects that defendant was convicted upon a plea of guilty, and it must therefore be amended to reflect that he was convicted upon a nonjury verdict (*see People v Saxton*, 32 AD3d 1286).

Entered: February 17, 2012

Frances E. Cafarell
Clerk of the Court